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Paper No. 6  
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**SEP 04 2003**

**OFFICE OF PETITIONS**

In re Application of  
Shin, et al.  
Application No. 10/053,461  
Filed: November 7, 2001  
Attorney Docket No. 594728117US

ON PETITION

This is a decision on the petition filed July 3, 2003 under 37 CFR 1.137(b).

Petitioner filed a nonpublication request on November 7, 2001. Petitioner states a Request to Rescind Previous Nonpublication Request under 35 USC 122(b)(2)(B)(ii) was filed January 7, 2002<sup>1</sup>. Petitioner further states that the rescission request alleged filed January 7, 2002 failed to include a Notice of Foreign Filing in accordance with 35 USC 122(b)(2)(B)(iii).

Accordingly, the application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing<sup>2</sup>.

A petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to paragraph (d) of this section.

The Notice of Rescission of Previous Nonpublication Request and Notice of Filing of PCT/US01/43474 on January 7, 2002 submitted herewith satisfy the reply element of 37 CFR 1.137(b)(1). The

<sup>1</sup> Petitioner is advised that a review of the official application file does not indicate receipt of the rescission alleged submitted November 21, 2001.

<sup>2</sup> The statutory requirements of 35 USC 122(b)(2)(B)(iii) provide that an applicant who has made a nonpublication request but who subsequently files, in a foreign country or under a multilateral international agreement, an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. Failure to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.

required petition fee has been charged to the requested deposit account. Petitioner has submitted the required statement of unintentional delay. Lastly, no terminal disclaimer is required.

The instant petition has been found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the failure to timely notify the Office within 45 days of the filing of an application in a foreign country or the filing of an application under an international multinational agreement as required by 35 USC 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

Enclosed please find a corrected filing receipt setting forth a projected date of publication along with official Notice Regarding Rescission of Nonpublication Request.

Petitioner is advised that the filing of a petition pursuant to 37 CFR 1.137(b) for failure to notify the Office of a foreign filing in accordance with 35 USC 122(b)(2)(B)(iii) will not relieve petitioner of the obligation to reply to any outstanding Office action.

This application is being forwarded to the Office of Initial Patent Examination for further processing thereafter the application will be forwarded to Technology Center 2600 to await receipt of applicant's response to the outstanding non-final Office action.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0310.

  
Alesia M. Brown  
Senior Petitions Attorney  
Office of Petitions

Enclosures: Notice Re: Rescission and Foreign Filing  
Corrected Filing Receipt